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9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 In re

13 EVANDER FRANK KANE,

14 Debtor.
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Case No. 21-50028-SLJ
Chapter 7

**DECLARATION OF EVANDER KANE
IN SUPPORT OF DEBTOR'S
OPPOSITION TO MOTION TO
CONVERT AND FOR APPOINTMENT
OF CHAPTER 11 TRUSTEE**

Date: March 30, 2021
Time: 11:00 a.m.
Via Zoom

20 I, Evander Kane, declare as follows:

21 1. I am 29 years old. I am a professional hockey player, having started playing
22 professional hockey at the age of 18. I currently am under contract with the San Jose Sharks (the
23 "Sharks"). I have played for the Sharks since 2018. I live in San Jose, California with my wife
24 and our nine-month-old daughter. I make this declaration in support of my opposition to the
25 Motion to Convert to Chapter 11 and for Appointment of a Chapter 11 Trustee (the "Motion"). I
26 could and would testify competently to the matters set forth below.

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KANE DEC RE MOTION TO CONVERT

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1 **Background to My Bankruptcy Filing:**

2 2. Over several years I borrowed large sums from various lenders. With respect to
3 Zions Bancorporation (“Zions”), which is the creditor bringing the Motion, on or about August
4 9, 2018, I signed several documents in connection with the loan. I executed a Business Loan
5 Agreement with Zions providing for its making of the loan. Attached as Exhibit A is a true and
6 correct copy of the Business Loan Agreement. I signed promissory notes and other documents
7 related to the payment of the Zions’ loan. I executed similar documents with other lenders and
8 provided them with UCC-1 financing statements and other document related to their security for
9 the loans. The loan documents did not contain any consumer disclosures or protections.

10 3. These loans were arranged by Sure Sports, LLC (“Sure Sports”) and its principal,
11 Leon McKenzie (“McKenzie”). I believed at the time that Sure Sports/McKenzie were acting as
12 a broker on my behalf and acting in my best interests. I paid large fees to Sure Sports for each
13 loan, with the fees based upon the amount of a loan. By way of example, in connection with the
14 \$4.25 million loan from Zions, I paid Sure Sports approximately \$67,000 as a fee.

15 4. I later learned that at the same time as I was paying fees to Sure Sports for
16 arranging various loans, the lenders were separately paying Sure Sports a fee for directing the
17 loans their way. In fact, I am informed and believe, that after some of the loans went into
18 default, Sure Sports and Mr. McKenzie provided advice to the lenders on how to collect on the
19 loans, including recommending California counsel and suggested that all the lenders agree on a
20 global approach to collecting, including contacting the Sharks and garnishing my wages. Sure
21 Sports’ conduct forms the basis of a cross-claim I filed against it in litigation pending in Miami,
22 Florida.

23 5. Because of concern over my ability to meet my debt obligations, I hired John
24 Fiero of Pachulski Stang Ziehl & Jones in October 2019. The goal was to work with Mr. Fiero
25 to come to an agreement with my primary creditors to provide for restructuring of my debts. The
26 primary creditors/lenders were Zions, Centennial Bank, Professional Bank and South River
27 Capital (collectively the “Lenders”). I also retained a Certified Public Accountant recommended
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1 by Mr. Fiero to assist me and Mr. Fiero in figuring out what might be feasible in terms of a
2 payment plan.

3 6. As discussed in Mr. Fiero's accompanying declaration, the effort to resolve things
4 with the Lenders was unsuccessful. They filed suit against me and pursued aggressive collection
5 efforts, including asserting that they had a security interest in my salary and were entitled to
6 direct receipt of my paychecks.

7 7. On top of which, due to the Covid-19 pandemic, a portion of the National Hockey
8 League season for 2019-2020 was canceled, which decreased my income for the season. I only
9 receive salary for games played by the Sharks, and approximately 14 games were canceled in the
10 2019-2021 season.

11 8. Based on the ongoing litigation by the Lenders, including a lawsuit naming the
12 Sharks as an additional defendant filed by Centennial in District Court in Miami, Florida, and the
13 failure to make any progress in resolving things with the Lenders, I retained Finestone Hayes
14 LLP to file the current bankruptcy case for me.

15 **Events Since Filing Bankruptcy:**

16 9. Since filing this case, I have worked diligently in responding to numerous
17 requests for information from the Chapter 7 trustee, Fred Hjelmsted (the "Trustee") and the
18 Office of the United States Trustee ("UST"). Among other things, I provided: bank statements
19 for all bank accounts going back to January 2020, credit card statements, prior years' federal and
20 state tax returns, mortgage statements, insurance information, information regarding various
21 business entities and business ventures, a breakdown of the use of loan proceeds, an explanation
22 of transactions reflected in bank statements and credit card statements, lease agreements, loan
23 agreements and various other miscellaneous documents reflecting my debts or financial history.

24 10. I also provided access to my home in San Jose and real property in Vancouver,
25 British Columbia to realtors selected by the Trustee to opine as to the current value of the real
26 property assets.

27 11. I accepted the valuations provided by the Trustee's realtors in reaching the
28 settlement with the Trustee regarding the real estate and funds on account. The Trustee has filed

1 a motion seeking approval of that settlement and I have already made the first installment
2 payment of \$55,000 to the Trustee consistent with the terms of the settlement.

3 12. I appeared for my initial Meeting of Creditors, which lasted approximately 2 ½
4 hours, and appeared for a continued meeting on February 25, 2021. The continued meeting last
5 approximately 30 minutes, after which time the Trustee concluded the meeting.

6 13. Even after the meeting I have continued providing documentation to the Trustee
7 and UST as requested. I have also stipulated with the UST and various creditors to extend the
8 deadlines for filing complaints to determine dischargeability or object to my discharge.

9 **Response to Various Allegations in the Motion**

10 14. The Motion makes various claims or accusations that are incorrect or baseless and
11 I wish to correct the record for the Court.

12 15. Regarding my salary with the Sharks, my Schedule I included a lengthy
13 explanation of anticipated salary for the current season. I believe the Lenders all had received
14 copies of my current contract with the Sharks, which Zions filed with the Motion. I have also
15 provided copies of my employment contract to the Trustee and UST shortly after filing my case.

16 16. The Motion ignores that under the current Collective Bargaining Agreement
17 (“CBA”) between the NHL owners and the Players’ Association, significant sums are withdrawn
18 from players’ paychecks. First, an amount is withheld as an “Escrow”. This amount is related to
19 revenue sharing between the owners and players. If the league does not hit certain revenue
20 targets for a season, the escrowed funds go back to the owners. For the year 2020-2021, the
21 escrowed amount is 20% of payroll, which amount is withheld from paychecks. Due primarily
22 to the Covid-19 pandemic, which limited the numbers of games played and has prevented fan
23 attendance, the league did not hit its revenue targets in the 2019-2020 season and will not hit
24 them for the 2020-2021 season.

25 17. In addition to the Escrow amounts, pursuant to an amendment to the CBA signed
26 shortly before the beginning of the current season, an additional amount of salary is withheld as
27 deferred compensation (the “Deferral”). The Deferral withhold is 10%. The Deferral is to be
28 paid to the players in three equal installments (without interest) in October 2022, 2023 and 2024.

1 The Escrow and Deferral deductions have a significant effect on my pay. By way of example, I
2 received my first paycheck for the current season at the end of January 2021. The gross earnings
3 for the pay period were \$213,905. After Escrow, Deferral, typical payroll deductions such as
4 state and federal income taxes and other incidental deductions, my net pay was \$38,709.

5 18. Moreover, the players' salary is based upon games played, rather than a simple
6 dividing up of an annual salary into semi-monthly paychecks. The Sharks have played 26 games
7 this season but thus far have had three games postponed due to Covid-19 protocols. The players
8 will not get paid for those games until and unless they are made up in the future.

9 19. With respect to my gambling, it has been an issue in my past and it would be
10 inaccurate to pretend it has not had a negative effect on my life, financially and otherwise. I
11 have undergone and continue to receive personal therapy to deal with it and other matters and
12 hope that the issue is behind me.

13 20. The Motion is also critical of my pre-bankruptcy investment in tax reduction
14 planning via a conservation easement. The Motion claims I borrowed \$2.55 million for a
15 "gamble". This is incorrect. I borrowed \$750,000 to invest in the structure pursuant to various
16 private placement memoranda. I was only required to pay an initial fee of \$35,000 in connection
17 with the investment, which I was advised should result in a tax refund of approximately \$1.8
18 million. I made this investment at the time as a way to raise funds to pay back creditors. I have
19 provided all the documents related to this investment to the Trustee and UST. If the investment
20 pays off, the funds (beyond the loan amount) would go to the Trustee.


21 21. The Motion also claims I was not being truthful by omitting the transfer of two
22 Rolex watches in payment of debt. I did the best job I could in working with my counsel to
23 prepare the initial bankruptcy filings. I did not have a CPA or financial advisor assist in the
24 preparation. I have amended those filings several times to continue to make certain they
25 accurately reflect the required information. At the Meeting of Creditors, I was asked numerous
26 questions about items in my bank statements, which I had provided to the Trustee and UST.
27 Often the entry in question involved payments to various creditors. The questions triggered my
28 memory about repaying debt with the transfer of the watches and that was something I added to

1 the amended Statement of Financial Affairs. No one asked about any Rolex watches or whether
2 I had ever paid a creditor via transfer of property.

3 22. The Motion also raised questions about the residence I own with my wife in San
4 Jose (the "San Jose Property"). I provided the Trustee and UST with all documents related to the
5 purchase of the San Jose Property and the debt against it. Lions Properties LLC ("Lions
6 Properties") was the initial purchaser of the San Jose Property. Lions Properties is a limited
7 liability company which my wife and I own. It has no creditors. I also provided the Trustee and
8 UST with documents concerning the formation and ownership of Lions Properties. Lions
9 Properties transferred title to the San Jose Property to me and my wife just before I filed this
10 case. I provided the documents related to the transfer to the Trustee and UST.

11 23. As noted above, I provided the Trustee's realtor physical access to the San Jose
12 Property during the pandemic despite the fact that I live there with my wife and our young
13 daughter. The Trustee has assessed the value of the San Jose Property, which was not that far off
14 from the value I placed on the Bankruptcy Schedules, and that value formed the basis of my
15 settlement with the Trustee.

16 I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th
17 day of March 2021 in San Jose, California.

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Evander F. Kane